IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2777 OF 2005

M/s.Anilkant T. Shah ...Applicant

vs.

Dirajlal Chhotalal Kothari
M/s.Ashirwad International
State of Maharashtra ...Respondents

Mr.Nimish Desai for the Applicant
Mr.A.S.Shitole, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : DECEMBER 4,2006.

P.C.:

1. Heard learned Advocate for the Applicant. The Applicant is the complainant in a complaint filed under section 138 read with section 141 of the Negotiable Instruments Act, 1881. The complaint was filed against the Partnership firm (Respondent No.2) and its partner (Respondent No.1 herein). The Applicant has been permitted to delete the name of the second Respondent at his risk.

2. By a Judgment and Order dated 7th April 2005, the learned Metropolitan Magistrate convicted the partnership firm and directed the partnership firm to pay a fine of Rs.5,000/-. However, the first Respondent was acquitted. The acquittal is mainly on the ground that the notice as contemplated by section 138 (b) of the said Act of 1881 was not sent to the first Respondent and the notice which was sent to the firm was not addressed to the first Respondent.

3. The learned Advocate for the Applicant placed reliance on the decision of the learned Single Judge of Calcatta High Court in case of Girish vs. Kanhaiyalal [1999 All. M.R. (cri) Journal 3). He submitted that in view of the said decision, it was not necessary for the Applicant to issue a notice to a partner of the firm. He submitted that notice to partnership firm is itself sufficient notice to the partners of the firm and especially that is so in a case of an unregistered firm.

4. I have considered the submissions.

5. Perusal of the complaint discloses that the cheque was not signed by the accused No.1 and it was signed by one Prakash on behalf of the firm. In the present case, it is an admitted position that the Applicant filed a summary suit and the amount due and payable under the cheque has been duly received by the Applicant. The partnership firm is already convicted as stated above. Considering this factual position, I find that the view taken by the learned Trial Judge is a possible view which could have been taken on the basis of the evidence on record. Merely because another conclusion is possible to be drawn is no ground to interfere in an Appeal against acquittal. Application is rejected.

JUDGE